Inquiry No. 175

State of California
Before the Commission on Judicial Performance

Respondent, Diana R. Hall's Verified Amended Answer to The Commission on Judicial Performance's Notice of Formal Proceedings

October 25, 2005

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STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE DIANA R. HALL, **NO. 175**	**VERIFIED AMENDED ANSWER OF JUDGE DIANA R. HALL**

COMES NOW, the Honorable Diana R. Hall, and amends the September 8, 2005, verified answer in response to the Notice of Formal Proceedings now pending before the Commission on Judicial Performance.

COUNT ONE

In answering the general allegations of Count One, Judge Diana R. Hall responds as follows:

Judge Hall admits that on December 21, 2002 she violated Vehicle Code

Section 23152(a) and Section 23152(b) by driving under the influence of alcohol and while having a blood alcohol level of .18%.

Judge Hall further admits that she was charged with these crimes in Santa Barbara Superior Court Case No. 1085616 and that following a jury trial in which she admitted these acts, she was convicted of a violation of the Vehicle Code sections. By her conduct, Judge Hall admits that she failed to maintain a high standard of conduct in violation of Canon 1, and that she failed to comply with the law as required by Canon 2, but denies that her conduct in any way was related to the integrity, independence or impartiality in her work as a judicial officer.

The alcohol was consumed by Judge Hall while she was at home and had neither an intention to, nor any anticipation of, driving a vehicle on the evening of December 21, 2002. Judge Hall's decision to drive her vehicle was made under extremely stressful conditions resulting from false accusations, made by her then domestic partner, Deidra Dykeman, that Judge Hall had engaged in domestic violence. Judge Hall left her home in order to end the ensuing argument with Ms. Dykeman.

Judge Hall is deeply remorseful for driving while intoxicated and regrets that her impaired judgment led her to leave the home in her vehicle while under the influence of alcohol.

Judge Hall has, since her conviction, completed the State mandated DUI

program, paid all fines in full, and completed the MADD program.

COUNT TWO

In answering the general allegations of count Two, Judge Diana R. Hall responds as follows:

Judge Hall resided with her then domestic partner Deidra Dykeman in February 2002. Judge Hall did not disclose their relationship to people other than her family and a few close friends and admits that she did not want the relationship to be publically disclosed.

Judge Hall and Ms. Dykeman had pooled their funds to purchase their home and both contributed to the expenses of the community. Each of them contributed $75,000 to the $150,000 down payment on their house. In February 2002, title to the home was held by Deidra Dykeman and Diana Hall as tenants in common. After Judge Hall learned that she would face her first contested election, she and Ms. Dykeman discussed the need to fund the campaign. Judge Hall had no experience in fund raising or running a campaign. As a judicial candidate, fund raising from outside sources was extremely distasteful to Judge Hall. She loathed asking others for money and did not want contributions from anyone who could believe that they would gain influence in her court by making a contribution.

Judge Hall discussed with Ms. Dykeman the potential of borrowing against their home to fund part of the campaign. Judge Hall believed she could not

borrow against the home, even to the extent that she had contributed to its purchase, unless Ms. Dykeman, as co-holder of the title to the home, agreed. Judge Hall viewed her reelection as a benefit to their community. Ms. Dykeman had expressed her desire that Judge Hall be re-elected. However, Ms. Dykeman stated that she did not want Judge Hall to borrow against the home to pay for election expenses. Instead, Ms. Dykeman on February 3, 2002, presented Judge Hall with a $20,000 check payable to Diana Hall. Judge Hall denies that she told Ms. Dykeman not to write the check directly to the campaign account.

When she received the check from Ms. Dykeman, Judge Hall had no basis for an accurate estimate of the total cost of a contested campaign and no understanding of whether surplus monies could be returned to a candidate. Thus, no statement was made at that time nor was there any understanding reached between Judge Hall and Ms. Dykeman, as to whether these funds were a gift, a loan, or a campaign "contribution." There was no discussion at that point of whether the funds would be repaid or otherwise reallocated between Judge Hall and Ms. Dykeman at a later date.

Judge Hall did not research the election laws which could relate to these funds. She did not view the funds as a contribution from an outside source, but instead considered the funds to be part of the resources, jointly available to the community to support the mutual goal of Judge Hall's reelection. She did not

know that under the campaign laws she could not commingle their funds.

Judge Hall deposited the $20,000 check in her account at Vandenberg Federal Credit Union on February 7, 2002. Judge Hall did not know that because the funds originated from an account controlled by Deidra Dykeman, Government Code section 84307 prohibited her from depositing the funds in her account at Vandenberg Federal Credit Union.

On February 8, 2002, Judge Hall wrote a check for $25,000, to the Committee to Re-elect Judge Diana R. Hall. At the time she wrote that check, she had no understanding or belief that she had violated any election law. Judge Hall's personal check was given to Paul Moe, the treasurer of her election campaign, as a personal contribution to the campaign. Judge Hall did not disclose to Paul Moe that any portion of the funds had come from an account that was controlled by Deidra Dykeman. The Campaign Statement (California form 460) filed on behalf of Judge Hall for the period from January 20, 2002, through February 16, 2002, listed Judge Hall as the sole source of the $25,000 received by the campaign on February 9, 2002. Ms Dykeman was not listed on the Campaign Statement.

Judge Hall signed the Campaign Statement on February 20, 2002, certifying under penalty of perjury that the information was true and correct under the belief that the funds could be reported as a contribution from her. Judge Hall denies that her error in identifying the funds as her own contribution constituted perjury under

the election laws.

Judge Hall admits that on June 26, 2002, an amended Campaign Statement was filed on behalf of her reelection campaign for the period of January 20, 2002, through February 16, 2002. Judge Hall further admits that the $25,000, initially reported as a contribution was re-characterized as a loan from Diana Hall upon the recommendation of her campaign treasurer, Paul Moe. Mr. Moe advised that it was proper to file an amended statement describing the funds as a loan to the campaign so that if there were funds remaining at the conclusion of the campaign, the funds could be repaid to Judge Hall. Although Judge Hall knew that a portion of the funds had originated from an account controlled by Ms. Dykeman, Judge Hall did not consider a further amendment of the statement to change the source of the funds. Judge Hall admits that the Campaign Statement was signed under penalty of perjury certifying that the information was true and correct. Judge Hall denies that the error in reporting of the funds as a loan from her constitutes perjury under the election laws.

On July 30, 2002, a Campaign Statement was filed on behalf of Judge Hall's reelection campaign for the period of February 17, 2002, through June 30, 2002. This document, for all the reasons set forth above, continues to report Judge Hall as the sole lender of the $25,000, received by the campaign on February 9, 2002. Judge Hall signed the document on July 29, 2002, under penalty of perjury,

without reconsideration of the manner in which the funds were reported. Judge Hall denies that the representation of the funds as a loan from her, constitutes perjury under the election laws.

On October 30, 2002, a Campaign Statement was filed on behalf of Judge Hall's reelection campaign for the period of July 1, 2002, through October 26, 2002. For all of the reasons set forth above, the statement continued to report Judge Hall as the lender of the $25,000 to the campaign, on February 9, 2002. Judge Hall admits that the Campaign Statement was signed by her on October 30, 2002, under penalty of perjury, without reconsideration of the manner in which the funds were reported. Judge Hall denies that the representation of the funds as a loan from her constitutes perjury under the election laws.

At the time the check was given by Ms. Dykeman to Judge Hall, there was no consideration of advising Ms. Dykeman that she may be required to file a campaign report under Government Code section 84105, and Judge Hall admits that she did not provide that advice to Ms. Dykeman.

The campaign expenses were not as high as Judge Hall anticipated that they might be. At the conclusion of her campaign, Judge Hall was advised by Mr. Moe that some of the monies that had been lent by her to the campaign could be returned. At that point, Judge Hall told Ms. Dykeman that some funds would be returned. Judge Hall expressed her desire to use those funds to repay others who

had contributed to the campaign. Ms. Dykeman disagreed, arguing that the contributors did not expect a return of the funds. Ms. Dykeman then stated that if Judge Hall intended to repay other donors, that the monies that had originated from Ms. Dykeman's account should also be repaid. Judge Hall then agreed to pay some of the money which was returned from the campaign directly to Ms. Dykeman and also agreed to make the entirety of the mortgage payments on their home for a period of time.

There was no discussion at this point of any formal re-characterizing of the funds as a loan from Ms. Dykeman. However when Judge Hall was later asked at her trial whether she had received a "gift" from Ms. Dykeman, Judge Hall described the funds as a loan, since by that point in time she had repaid the funds. Judge Hall admits, as set forth above, that she did not report this "loan" when it was received from Ms. Dykeman, since the funds were not identified as a loan at that time.

Judge Hall also admits that a portion of the funds were used for her reelection campaign. As set forth above, Judge Hall did not know at the time of the filing of her Campaign Statements that the funds received from the account controlled by Ms. Dykeman should have been reported as either a contribution or a loan from Ms. Dykeman under Government Code sections 84211(f) or 84211(g). Judge Hall further admits that she did not report the information outlined in

84211(g) as required by section 84216(b)(3) at any point after she agreed to return the funds to the community.

Judge Hall further admits, as alleged in the Notice of Formal Proceedings, that she "failed to disclose the terms of this purported loan, including the annual interest rate and security, if any, given for the loan" since no such terms existed. Judge Hall also admits that there was no writing that "clearly stated the terms (including the parties to the loan agreement, the date and amount of the loan, the dates and amounts of payments due and the rate of interest)."

Judge Hall did not know or believe that any law governing conflicts of interest (including Government Code sections 87207(a)(5) or 87461(a)) could require reporting of the exchange of funds with Deidra Dykeman since there would be no possibility that Ms. Dykeman could have any financial interest or benefit in any other fashion in any judicial action taken by Judge Hall.

Judge Hall denies that she knowingly or willfully violated any statute but admits that she did not comply with the terms of Government Code sections 84105, 84211(f), 84211(g) and that pursuant to the terms of 84216(b)(3) that reporting was ultimately required under 84211(g). Judge Hall is informed and believes that Government Code sections 84301 and 84302 and Government Code sections 87202(a)(5) and 87461(a) do not apply to these circumstances and thus denies that those sections were violated. Judge Hall admits that she certified the

campaign statements under penalty of perjury and admits that the statements erroneously stated that she was the sole source of the $25,000, payment to the campaign; however, she denies that she committed perjury under the election laws. Judge Hall denies that she violated the Code of Judicial Ethics Canon 1 and denies that she violated Canon 5 as applicable at the time of the election. Judge Hall admits that by the failure to comply with the Government Code, she violated Canon 2A.

COUNT THREE

In answering the general allegations of Count Three, Judge Diana R. Hall responds as follows:

Judge Hall admits that on June 22, 2001, Deputy District Attorney Kevin Duffy filed a peremptory challenge against her in the criminal case of *People v. Hernandez*, Case No. 1059599, pursuant to California Code of Civil Procedure section 170.6. Judge Hall denies that she called Deputy District Attorney Kevin Duffy (or Deputy Public Defender Mary Johnston) to the Bench and stated words to the effect that, "I know it's not appropriate to inquire as to why the prosecutor exercised a 170.6 challenge, but why are you doing this Mr. Duffy?"

Judge Hall further denies that she asked whether it was because that morning "[she] had reduced three felonies to misdemeanors on a domestic violence case." She further denies that Mr. Duffy stated on June 25, 2001 that:

"The 170.6 was filed on a case-by-case basis and that a number of factors went into the decision."

Judge Hall further denies that she asked DDA Duffy: "Does Tom Sneddon know you're doing this?," or any words to that effect.

Judge Hall acknowledges that Tom Sneddon is in fact the District Attorney of Santa Barbara County.

Judge Hall further denies that she stated to DDA Duffy that: "You will be in Tom Sneddon's office explaining yourself for filing the 170.6 challenges," or any words to such an effect. In fact, the record reflects that upon being notified that a 170.6 challenge had been filed in Case No. 1059599, Judge Hall engaged in the following discussion with DDA Duffy:

"Mr. Duffy: There was a 170.6 filed in this case.

The Court: Was there?

Mr. Duffy: On the 22nd of June.

The Court: Did you file a paper or did you just do that orally?

Mr. Duffy: No, a paper was filed, Your Honor, it was date stamped on the 22nd of June at 1:22 by the clerk.

The Court: I'm not showing it in the file. Do you have a copy of it?

Mr. Duffy: I have my copy. I'll give the Court the original.

The Court: Let's see. That was filed on June 22nd. Okay. We'll call for a new assignment, then."

Following this exchange, a break was taken solely for the purpose of having the clerk determine where the matter would be reassigned. Upon the clerk's confirmation that the matter was to be reassigned to Department 3, the Court set a preliminary hearing for Department 3.

Judge Hall not only denies the conduct alleged, but denies that her conduct in handling said peremptory challenge filed by DDA Kevin Duffy was improper or a violation of the Code of Judicial Ethics, Canons 1 and 2A.

DATED: October 25, 2005

Respectfully submitted,

ROBIE & MATTHAI
A Professional Corporation

By: _____
EDITH R. MATTHAI
REBECCA D. LIZARRAGA
Counsel for Respondent
Judge Diana R. Hall

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I, DIANA R. HALL, DECLARE that:

I am the respondent judge in the above-entitled proceeding. I have read the foregoing Amended Answer of Judge Diana R. Hall, and all facts alleged in the above document, not otherwise supported by citations to the record, exhibits, or other documents, are true of my own personal knowledge.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed this 24 day of October, 2005, at Santa Maria, California.

DIANA R. HALL
Judge No. 175